

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FILED
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SANDRA WIESNER,

Plaintiff

VS.

JEFFERSON PILOT FINANCIAL
INSURANCE COMPANY,

Defendant

CIVIL ACTION
NO. 05-10521-EFH

PLAINTIFF'S ANSWER TO COUNTERCLAIM

Pursuant to F. R. Civ. P., Rule 12, the Plaintiff answers the Defendant's Counterclaim as follows:

Introductory Statement

Plaintiff acknowledges that F. R. Civ. P., Rule 13, provides for the pleading of counterclaims and denies that there have been any disability benefit overpayments as alleged by the Defendant.

Parties

1. Plaintiff admits the allegations stated in Paragraph 1 of Defendant's Counterclaim.
2. Plaintiff admits the allegations stated in Paragraph 2 of Defendant's Counterclaim.

Counterclaim for Restitution

3. Plaintiff admits the allegations stated in Paragraph 3 of Defendant's Counterclaim.
4. Plaintiff admits the allegations stated in Paragraph 4 of Defendant's Counterclaim.
5. Plaintiff admits the allegations stated in Paragraph 5 of Defendant's Counterclaim.

6. Plaintiff neither admits nor denies the allegations stated in Paragraph 6 of Defendant's Counterclaim, which are a matter on which the Contract speaks for itself and will require Defendant to prove such allegations.
7. Plaintiff denies the allegations stated in Paragraph 7 of Defendant's Counterclaim, alleging Defendant's belief that she received "other income benefits" during the "Own Occupation Period." Answering further Plaintiff states that she did not receive any "other income benefits" until July 16, 2003, when she began receiving ordinary disability retirement benefits from the Massachusetts Teachers Retirement Board (MTRB), after the Defendant terminated her disability benefits under the subject ERISA plan.
8. Plaintiff denies the allegations stated in Paragraph 8 of Defendant's Counterclaim.

Affirmative Defenses to Counterclaim

FIRST AFFIRMATIVE DEFENSE TO COUNTERCLAIM

Defendant's Counterclaim fails to state a claim on which relief can be granted.

SECOND AFFIRMATIVE DEFENSE TO COUNTERCLAIM

Plaintiff received ERISA benefits from Defendant which terminated in January 2003. Plaintiff received no other income benefits from any source until July 16, 2003, when she began receiving disability retirement benefits from MTRB, and there was no time when she received or was eligible to receive any other income benefits while receiving benefits from Defendant under the subject ERISA plan. A letter from MTRB dated May 31, 2005, confirming that disability retirement benefits were paid back only through July 16, 2003, is attached hereto as Addendum A.

WHEREFORE, the Plaintiff Sandra Wiesner prays for relief in addition to that claimed on her Complaint in this action, as follows:

First, that judgment be entered against Defendant Jefferson Pilot Financial Insurance Company dismissing its Counterclaim for overpayment, plus interest and costs; and

Second, that the Court grant to Plaintiff Sandra Wiesner such other relief as may be appropriate on the law and the facts as pleaded herein.

For the Plaintiff



Richard K. Latimer, BBO #287840
Kistin Babitsky Latimer & Beitman
13 Falmouth Heights Road, Box 590
Falmouth, MA 02541
(508) 540-1606

Certificate of Service

I, Richard K. Latimer, certify that I have served a copy of the foregoing Answer to Counterclaim upon Edward S. Rooney, Jr., Esq., at Eckert Seamans Cherin & Mellott, LLC, One International Place, 18th Floor, Boston, MA 02110, by first class mail, postage prepaid, on this 24th day of June, 2005.



Richard K. Latimer



**MASSACHUSETTS
TEACHERS'
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May 31, 2005

Ms. Sandra Wiesner
10 Florence Street RFD#1
Buzzards Bay, MA 02532

Re: Ordinary Disability Retirement Benefits

Dear Ms. Wiesner:

This is to confirm our conversation over the telephone today. The records of the Massachusetts Teachers' Retirement Board show that your effective date of retirement is July 16, 2003.

To my knowledge, any and all retroactive retirement benefits would have only been paid back to July 16, 2003.

Very Truly Yours,

Aaron E. Morrison
Associate General Counsel/Disability Case Manager